

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE DAY SIXTH OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 565 of 1994

Between:

A.Sadsiva Rao, S/o Someswara Swamy, Dy.Manager, State bank of India,
Secunderabad.

..... PETITIONER

AND

- 1 The chairman, State Bank of India, Central Office, Nariman Point, Mandamcama Road, Bombay.
- 2 The Cheif General Manager-cum-Disciplinary Authority, State Bank of India, Local Head Office, SBI Buildings,
Bank Street, Hyderabad.
- 3 The President, Appellate Authority, Local Board, State Bank of India, Local Head Office, SBI Buildings,
Bank Street, Hyderabad.
- 4 Dy.Managing Director-cum-Reviewing Authority, (Personnel & Service), State Bank of India,
Central Office, Post.Box.No.12, Bombay-400021.
- 5 Dy.Managing Director-cum-Reviewing Authority, Executive Committee of the Central Board,
State Bank of India, Central Office, Madamcama Road, Bombay-400021.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ in the nature of mandamus or any other appropriate writ or order or direction, declaring the punishment inflicted on the petitioner by reducing the pay by 2 stages in the time scale without specifying period and the order to treat the period of suspension will not be treated as duty, as being illegal, null and void while directing the period of suspension of the petitioner from 1-5-1982 to 3-8-1983 be treated as duty with consequential benefits

For the Petitioner:MR.R.S.MURTHY

For the Respondent No.: MR.K.SRINIVASAMURTHY

The Court Made the Following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 565 of 1994

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ORDER:

The present writ petition is filed questioning the imposition of punishment on the petitioner by reducing the pay by two stages in the timescale without specifying the period and not treating the period of suspension as on duty, as illegal and arbitrary.

At the time of incident, the petitioner was working as Deputy Manager in State Bank of India, Secunderabad. He was placed under suspension by an order dated 26.4.1982 and was reinstated into service w.e.f. 4.8.1983. An enquiry was conducted and the same was completed by 20.4.1983. The petitioner was called upon to give explanation by supplemental charge dated 4.10.1982. The petitioner gave explanation to the charges levelled against him. It is stated that he was denied of affording reasonable opportunity of inspecting the documents, cross-examining the complainant on whose complaint the disciplinary action was initiated. He also contended that the Enquiry Officer came to the conclusion that the charges levelled against him are proved, on the basis of conjectures and surmises. The appellate authority concurred with the findings of the disciplinary authority without any speaking order. The reviewing authority while modifying the punishment of reduction of pay by two stages in the timescale did not specify the period and did not interfere with the regularization of suspension period which was more harsh and severe than the original punishment. Therefore, it is stated, the orders 16.3.1984 of the appellate authority, the orders dated 30.7.1984 of the appellate authority and the orders dated 30.7.1986

and 9.3.1993 of the reviewing authority are highly arbitrary and that no opportunity was given to the petitioner to rebut the charges levelled against him. Hence the present writ petition.

The respondents have filed the counter affidavit stating that in the absence of any statutory rule or provision the petitioner cannot invoke the jurisdiction of this court and the writ petition is liable to be dismissed on the ground of laches. The disciplinary authority vide its order dated 16.3.1984 imposed the punishment of reduction of pay by three stages in timescale of the petitioner and the appellate authority vide its order dated 25.7.1984 confirmed the order of the disciplinary authority and the reviewing authority vide its order dated 30.12.1986 reduced the punishment imposed on the petitioner and the petitioner after lapse of seven years has chosen to challenge the order of punishment in order to cover up the delay. The petitioner addressed a letter dated 11.1.1993 to consider his case, but the same has been rejected. Basing on the seriousness of the irregularities, he was placed under suspension. After conducting the domestic enquiry the disciplinary authority passed the impugned order. Accordingly the petitioner was reinstated into service w.e.f. 4.8.1983. The Enquiry Officer held that the allegations I(a), I(b) and II(a) of the charge sheet dated 10.5.1982 are proved. The disciplinary authority by his order dated 16.3.1984 held that the period spent by the petitioner will be treated as such and that the period of suspension will not be treated as on duty for the purpose of salary, allowances, increments and pension etc. It is not for this court to go into the adequacy or sufficiency of the evidence. The petitioner was permitted to have defence counsel of his choice. All the prosecution witnesses were available for cross-examination by the defence. Every possible and reasonable opportunity as enunciated in principles of natural justice was given to the petitioner. Hence, the writ petition is liable to be dismissed.

It is vehemently contended by the learned counsel for the petitioner that normally when the petitioner was reinstated into service, his period of suspension shall be treated as on duty for all

practical purposes; that no opportunity was given to the petitioner to defend the case at the time of enquiry and thereby the respondents have violated the principles of natural justice; that the enquiry report has not been furnished to the petitioner; that while reducing the pay by two stages the period has not been specified by the authorities; that the disciplinary authority did not give any reasons for arriving at the conclusion that the petitioner committed any misconduct; that the appellate authority mechanically confirmed the same without application of mind, so also the reviewing authority mechanically passed the order and, therefore, the impugned orders suffer from serious infirmities. Hence, he prays to set aside the punishment imposed by the respondents-authorities.

On the other hand, learned counsel for the respondents contended that after giving reasonable opportunity to cross-examine the witnesses and after following the principles of natural justice the domestic enquiry has been conducted; that though the reviewing authority passed the order in the year 1986, the petitioner has not filed any petition before this court and after lapse of seven years he filed the writ petition stating that there was violation of principles of natural justice and the writ petition is liable to be dismissed on the ground of laches; that the petitioner has not established the prejudice that was caused to him in the manner of conducting the enquiry and that there are absolutely no grounds to interfere with the impugned proceedings.

The petitioner was found guilty for the following charges levelled against him:

“I(a) On the 29th November, 1979, at about 11.30a.m. when you were approached by one Miss. Mikkilineni Raja Sundari for sanction of a gold loan, you are reported to have advised her that no gold loans were being sanctioned and asked her to come after six days. It is further reported that even when you were instructed by the Branch Manager to allow her to avail a gold loan on that day, you are reported to have advised her that she would be eligible for a loan of

Rs.800/- only as against Rs.1,200/- required by her, on the plea that the quality of the gold was inferior. When the gold ornaments were subsequently appraised, the appraiser confirmed that the quality of the gold was more than twenty carats and thereafter, a loan amount of Rs.1,200/- could be disbursed to the borrower, at about 6.00 p.m. on that day. In the circumstances, it is alleged that your plea that the gold was of inferior quality was only to cause inconvenience to the customer.

I(b). On the 30th November, 1979 when the Branch Manager had sanctioned a gold loan to Smt. Aluri Sarojini, a valued constituent of the Bank and instructed you to arrange for the disbursement of the loan, you are alleged to have disobeyed his orders and deliberately did not disburse the gold loan to the above constituent on the plea that you were busy with your work. As a result, the Branch Manager had no other alternative but to sanction her a clean overdraft of Rs.600/- in the interest of the Bank.

II(a). It is reported that you had not checked the Savings Bank ledgers, although you were aware that the work relating to the checking of ledgers was allotted to you on the following days: 10th, 15th, 16th, 18th, 20th, 21st and 27th to 30th of April, 1981 and 1st to 8th and 11th May, 1981”.

The other allegations in the charges are not proved. With regard to the 1st charge, the plea of the accused is that in view of the inspection at Gannavaram Branch during that period, the sanction of gold loan was suspended under the standing instructions. From the evidence it is clear that the audit was not the reason for not granting loan to the customer. With regard to Charge No. I(b) that the petitioner has deliberately disobeyed the orders of the Branch Manager and had not disbursed the gold loan to Smt. Sarojini, a customer of the bank, on 30.11.1979, the plea of the petitioner is that he has neither refused nor disobeyed the orders of the Branch Manager but only asked for provision of a cashier for the said purpose due to shortage of staff as he was otherwise engaged with Government work. Charge

No.II(a) is that he has not checked the day books in respect of the days acknowledged by him. In respect of charge No. I(c), though the enquiry officer gave a finding that the charge is not proved, but the disciplinary authority differed with the findings of the Enquiry Officer and after recording reasons held that the Charge No.I(c) is proved.

The law is well settled that in the proceedings and decisions taken in administrative matters, the scope of judicial review is confined to the decision making process and it is not extended to the merits of the decision taken. If any infirmity is pointed out in matters of disciplinary proceedings which may have the effect of vitiating the enquiry process, then only this court can interfere with such proceedings. In the decision making process if the authority deciding the case has ignored the vital evidence and thereby arrived at an erroneous conclusion or has misconstrued the provisions of the relevant Act or misunderstood the scope of its jurisdiction, the constitutional power under Articles 226 can be invoked to set aside such erroneous findings. So also, this court can exercise such power to prevent gross injustice to the party complaining. It is also equally well settled that the court should not interfere with the Administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court in the sense that it was in defiance of logic or moral standards. It is not disputed that the disciplinary authority and on appeal the appellate authority as well as on review the reviewing authority being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or the gravity of the misconduct. As seen from the record, it is not a case of violation of principles of natural justice. An opportunity was given to the petitioner to cross-examine the witnesses examined on behalf of the Department. So also, a reasonable opportunity was given to the petitioner to adduce evidence. The petitioner also got examined on his behalf about 10 witnesses and marked 3 documents. The enquiry

officer after elaborate consideration of the evidence of PWs 1 and 2 came to the conclusion that PW-1 had approached the Bank for gold loan at about 11.30 a.m. and the suspected official was then attending to audit party and did not attend the customer; that when sanction of gold loan was authorized by the Branch Manager, the suspect official had expressed that the gold may not be of the required purity and that after verification of the gold by the appraiser, the suspect official had released the gold loan after issuing the usual certificate and all this caused inconvenience to the customer.

Coming to the next charge, the enquiry officer found that the suspected official had deliberately disobeyed the orders of the Branch Manager and did not disburse the loan, as a result the Branch Manager had no other alternative but to sanction the clean overdraft in the interest of the Bank.

With regard to non-checking of the ledgers on the dates mentioned in the charge, it is admitted by the petitioner that because of eye injury to his daughter he was leaving the office whenever emergency was arising after duly informing the Manager, whereas the Branch Manager stated that no such intimation was given to him. Therefore, the charge against the petitioner has been proved. The disciplinary authority having accepted the findings of the Enquiry Officer had differed with one of the findings for which it has recorded the reasons and imposed the penalty of reduction in timescale by three stages. Considering the nature of misconduct proved against the official, the disciplinary authority treated the period of suspension as such and accordingly the period of suspension was directed not to be treated as on duty for the purpose of salary, allowances, increments, pension etc. The appellate authority after elaborate consideration of the matter confirmed the same. However, the revisional authority by its order dated 30.12.1986 reduced the punishment of reduction of pay in the timescale by two stages. With regard to treating the suspension period as on duty, it was held that having regard to the gravity of the charges, no further relief can be given.

Coming to the laches, the plea of the petitioner is that he has been making representations to various authorities and therefore after rejection of his case in the year 1993 the present writ petition is filed and, as the petitioner was pursuing his remedies with the Department, he could not file the writ petition in time. The reviewing authority passed the order on 30.12.1986. Thereafter the petitioner filed a representation before the Executive Committee to review his case in the month of January 1993 but the same has been rejected in March, 1993. Thereafter, the present petition is filed. It is for the authorities concerned to fix the time or period for which a delinquent officer is not entitled for the increments, especially in case of punishment or deferring the increments. Therefore, on the ground of laches, the same cannot be denied.

With regard to the period of suspension to be treated as on duty, normally when a person is reinstated into service the period of suspension will be treated as spent on duty unless cogent and convincing reasons are given by the authorities to deny the same. The disciplinary authority did not say as to why the petitioner is not entitled to be treated as on duty during the suspension period. It simply recorded a finding that considering the nature of misconduct proved against the official the suspension period cannot be treated as on duty. The appellate authority has not considered all the material on record but simply stated that there is no justification for interfering with the order of the disciplinary authority. This part of the order is passed totally without application of mind. However, the disciplinary authority has recorded reasons for imposing the punishment and the reviewing authority, considering the material on record, reduced the penalty from three stages to two stages, but there is no mention as to the period of reduction of pay by two stages. So also, the reviewing authority has not given any reasons for not treating the suspension period as on duty.

Rule 50 A(8) of the State Bank of India (Supervising Staff) Service Rules, which governs the service conditions of its employees, reads thus:

Rule 50 A(8) (i) Where the appointing authority holds that the employee has been fully exonerated or that the suspension was unjustifiable, the employee shall be granted the full pay to which he would have been entitled, had he not been so suspended, together with any allowance of which he was in receipt immediately prior to his suspension or may have been sanctioned subsequently and made applicable to all employees. The period of absence from duty in such a case shall, for all purposes, be treated as period spent on duty.

ii) In all cases other than those referred to in clause (i) above and where the employee has not been subjected to the penalty of dismissal, the period spent under suspension shall be dealt with in such a manner as the disciplinary authority may decide and the pay and allowances of the employee during the period adjusted accordingly”.

It is not a case of the petitioner being exonerated from the charges of the suspension was unjustifiable so as to treat the period of suspension as the period spent on duty. The power is given to the disciplinary authority to treat the period of suspension if penalty of dismissal is imposed. So, the discretion is given to the disciplinary authority to decide the period of suspension. Such a discretion has to be exercised judiciously, but no reasons are given by the disciplinary authority for not treating the period of suspension as the period spent on duty except observing that having regard to the gravity of the charges the period of suspension shall be treated as not spent on duty. The petitioner was under suspension for a period of 15 months. The disciplinary authority has not exercised its discretion judiciously in deciding the question whether to treat the period of suspension as spent on duty or not. So also the appellate authority and the reviewing authority have not properly applied their mind with regard to this aspect. The petitioner has not caused any financial loss to the Bank and it is not a case of serious financial irregularities or misappropriation of funds of the bank.

The next contention of the learned counsel for the

petitioner is that no period is specified by the reviewing authority while reducing the pay of the petitioner by two stages. Normally when punishment is imposed it is incumbent upon the concerned authority to pass appropriate orders specifying the period of deferring the increments, which has not been done in the instant case. Therefore, this court can pass appropriate orders instead of remitting the case to the reviewing authority. It is well settled that the court sitting in appeal against the punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty. However, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appellate authority to consider the penalty imposed or, to shorten the litigation, it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. The departmental enquiry was conducted against the petitioner in the year 1983. The reason for conducting enquiry was that the petitioner caused inconvenience to the customer on 29.11.1979 and for not checking the registers relating to April and May, 1981. In this case, the petitioner has been serving the respondent-Bank for nearly 20 years prior to the enquiry, with unblemished service. The charge itself shows that what was alleged against the petitioner was causing inconvenience to the customer and also not checking the registers. A reading of the record shows that the alleged acts of the petitioner were not motivated by any ulterior consideration and at the most they could be the acts of callousness or negligence. It is not a case of not discharging the duties by the petitioner with honesty and integrity. The charges proved against him are more or less callous in nature. He has not taken proper care in attending to the customer and he has not taken care to check the ledgers. The petitioner explained that not checking the registers was due to some personal problems in the family but not willfully. It is also observed by the Enquiry Officer that all the officials at the Branch were checking the day books with some omissions and checking of the day books did not receive the desired attention.

Considering all these aspects, treating the period of suspension as not spent on duty for the purpose of salary, allowances, increments, pension etc. is unjustified and disproportionate to the proved misconduct, especially in view of the fact that no reasons were assigned for denying the said benefit. As 20 years have elapsed from the date of imposing the penalty, instead of remitting the matter to the authorities, this court can modify the punishment, treating it as an exceptional case.

Accordingly, the writ petition is partly allowed treating the period of suspension as spent on duty for the purpose of salary, allowances, increments, pension etc. As the stoppage of increments by the reviewing authority did not indicate the period, it is just and proper to impose the punishment of deferring the increments by two stages for a period of two years. No costs.

K.C. Bhanu, J.

Dt. 06-07-2004.

MVB.

Sd/- XXX

..... REGISTRAR

SECTION OFFICER

To

- 1 The chairman, State Bank of India, Central Office, Nariman Point, Mandamcama Road, Bombay.
- 2 The Cheif General Manager-cum-Disciplinary Authority, State Bank of India, Local Head Office, SBI Buildings,
Bank Street, Hyderabad.
- 3 The President, Appellate Authority, Local Board, State Bank of India, Local Head Office, SBI Buildings,

Bank Street, Hyderabad.

4 Dy.Managing Director-cum-Reviewing Authority, (Personnel & Service), State Bank of India,

Central Office, Post.Box.No.12, Bombay-400021.

5 Dy.Managing Director-cum-Reviewing Authority, Executive Committee of the Central Board,

State Bank of India, Central Office, Madam Cama Road, Bombay-400021.

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